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TM

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/026,824 02/20/98 WINFREE

R TACOBEL.010A

PM82/0920

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EXAMINER

BARTUSKA, F

ART UNIT

PAPER NUMBER

3652

DATE MAILED:

7
09/20/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/026824

Applicant(s)

R.C. WINFREE et al

Examiner

F. J. BARTUSKI

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on Aug. 16, 1999.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15, 17-31 AND 44-63 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 31, 50 AND 51 is/are allowed.
- ☒ Claim(s) 1-11, 13-15, 17-30, 44-49 AND 52-63 is/are rejected.
- ☒ Claim(s) 12 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 3652

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 10, 13, 17, 18, 20, 21, 29 and 30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tuhro et al. Tuhro et al show a food preparation line with three sections including a heated storage compartment 22 in the first section, a cooled storage compartment 24 in the second section, a refrigerator 35a, a package storage compartment 33 and an open package storage compartment 71.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter

Art Unit: 3652

sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 5 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlon et al. Tuhro et al show all the features of the applicants' claimed invention except the cooking unit. It would have been obvious to one of ordinary skill in the art in view of the cooking unit 28 of Conlon et al to provide the device of Tuhro et al with a cooking unit to permit cooking as a part of the food preparation. Further, merely calling for particular elements to be located in particular locations would involve only obvious matters of design choice to one of ordinary skill in the art in view of the design flexibility disclosed in col. 2, lines 19-32 of Tuhro et al.

Art Unit: 3652

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Searcy. Tuhro et al show all the features of the applicants' claimed invention except the sections being arranged in a U shape. It would have been obvious to one of ordinary skill in the art in view of the U-shaped arrangement of the food preparation area 14 of Searcy to arrange the sections of Tuhro et al in the more space efficient U shape.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al. Tuhro et al show all the features of the applicants' claimed invention except the diagnostic system. Merely calling for temperature sensors and controls in a device with heating elements would appear to involve only notorious expedients in the art.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Baze. Tuhro et al show all the features of the applicants' claimed invention except the taco rail. It would have been obvious to one of ordinary skill in the art in view of the taco rail of Baze to provide the device of Tuhro et al with a taco rail to permit the preparation of tacos.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al. Tuhro et al show all the features of the applicants' claimed invention except the electronic display. It would have been obvious to one of ordinary skill in the art in view of the

Art Unit: 3652

electronic order display 118 of Conlan et al to provide the device of Tuhro et al with an electronic display for displaying orders to be assembled.

9. Claims 19 and 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Boyd et al. Tuhro et al show all the features of the applicants' claimed invention except the cup dispenser. It would have been obvious to one of ordinary skill in the art in view of the cup dispensers 56 of Boyd et al to provide the device of Tuhro et al with a cup dispenser to provide cups to contain the food.

10. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlon et al. Tuhro et al show all the features of the applicants' claimed invention except the ingredient dispensers. It would have been obvious to one of ordinary skill in the art in view of the ingredient dispensers 52 and 54 of Conlon et al to provide the device of Tuhro et al with ingredient dispensers to aid the food preparation.

11. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlon et al as applied to claim 25 above, and further in view of Pinckard. Tuhro et al, as modified by Conlon et al, show all the features of the applicants' claimed invention except the heated shelf. It would have been obvious to one of ordinary skill in the art in view of the heated

Art Unit: 3652

shelf 48 of Pinckard to provide the device of Tuhro et al with a heated shelf to keep the food warm.

12. Claims 48, 55-59 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Boyd et al as applied to claim 47 above, and further in view of Searcy. Tuhro et al, as modified by Boyd et al, show all the features of the applicants' claimed invention except the sections arranged in a U shape. It would have been obvious to one of ordinary skill in the art in view of the U-shaped arrangement of the food preparation area 14 of Searcy to arrange the food preparation area of Tuhro et al in the more space efficient U shape.

13. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al as applied to claim 24 above. Further, merely calling for a particular food item to be on a food preparation line would involve only a notorious expedient in the art.

14. Claims 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al. Tuhro et al show a food preparation line with three sections including a heated storage compartment 22 in the first section, a cooled storage compartment 24 in the second section, a refrigerator 35a, a package storage compartment 33 and an open package storage compartment 71. Merely calling for particular elements to be located in particular locations would

Art Unit: 3652

involve only obvious matters of design choice to one of ordinary skill in the art in view of the design flexibility disclosed in col. 2, lines 19-32 of Tuhro et al.

15. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Searcy and Boyd et al as applied to claim 55 above in further view of Conlan et al. Tuhro et al, as modified by Searcy and Boyd et al, show all the features of the applicants' claimed invention except the ingredient dispenser. It would have been obvious to one of ordinary skill in the art in view of the ingredient dispensers 52 and 54 of Conlon et al to provide the device of Tuhro et al with ingredient dispensers to aid the food preparation.

16. Claims 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Searcy and Boyd et al as applied to claim 55 above in further view of Conlan et al. Tuhro et al, as modified by Searcy and Boyd et al, show all the features of the applicants' claimed invention except the electronic display. It would have been obvious to one of ordinary skill in the art in view of the electronic order display 118 of Conlan et al to provide the device of Tuhro et al with an electronic display for displaying orders to be assembled.

Art Unit: 3652

Allowable Subject Matter

17. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

18. The applicants' remarks have been considered but have not been found persuasive because Tuhro et al show an open compartment at 71 and Conlan et al show an electronic display at 118 and Tuhro et al teach in col. 2, lines 19-32 that the elements of the food preparation line can be arranged in different locations.

Conclusion

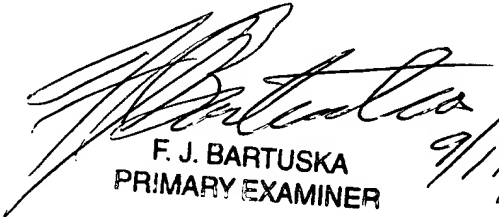
19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH**

Art Unit: 3652

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. J. Bartuska whose telephone number is (703) 308-1111.


F. J. BARTUSKA
PRIMARY EXAMINER 9/17/99